**United States Department of Labor**
**Employees' Compensation Appeals Board**

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| **R.D., Appellant** | ) | |
| **and** | ) | **Docket No. 10-1037** |
| | ) | **Issued: January 12, 2011** |
| **DEPARTMENT OF THE ARMY, RESERVE OFFICERS TRAINING CORPS, Norman, OK, Employer** | ) | |

*Appearances:*
*Brooke Rich*, *Esq*., for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

# DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

## *JURISDICTION*

On March 3, 2010 appellant filed a timely appeal from an October 28, 2009 merit decision of the Office of Workers' Compensation Programs and a nonmerit decision dated January 5, 2010. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

## *ISSUES*

The issues are: (1) whether appellant sustained a left shoulder injury in the performance of duty on June 24, 2009; and (2) whether the Office properly refused to reopen appellant's case for reconsideration under 5 U.S.C. § 8128.

## *FACTUAL HISTORY*

Appellant, a 29-year-old cadet, filed a claim for benefits on August 12, 2009, alleging that he injured his left shoulder on June 24, 2009 while sliding down an exercise rope. He submitted an August 14, 2009 treatment slip from Oklahoma Sport and Orthopedics Institute.

Appellant was examined on August 11, 2009 and diagnosed with a superior labrum anterior to posterior (SLAP) lesion of the left shoulder and a left rotator cuff strain.

By letter dated September 21, 2009, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from a treating physician describing his condition with an opinion as to whether it was causally related to the employment incident. The Office requested that appellant submit the evidence within 30 days.

In an August 11, 2009 report, Dr. Richard Kirkpatrick, a Board-certified orthopedic surgeon, advised that appellant injured his left shoulder about six weeks prior while engaged in a rope course exercise. Appellant continued to engage in activities with the Reserve Officers Training Corps (ROTC) and experienced pain and discomfort in the left shoulder with occasional popping. On examination, he had full range of motion and a mildly positive Neer impingement sign, with some mild tenderness over his acromioclavicular (AC) joint and over the anterior aspect of his shoulder. Appellant advised that x-ray results were relatively normal in the glenohumeral joint but showed some mild AC joint arthritis. Dr. Kirkpatrick diagnosed a possible labral pathology versus rotator cuff tendinitis/bursitis. He scheduled appellant for a magnetic resonance imaging (MRI) scan.

In a September 15, 2009 report, Dr. Kirkpatrick stated that a left shoulder MRI scan showed partial surface injury to the supraspinatus with some impingement and AC joint arthritis. He diagnosed a SLAP lesion and impingement of the rotator cuff. Dr. Kirkpatrick did not see a large labral component and administered a subacromial injection.

In an October 15, 2009 report, Chris Travis a physician's assistant, related appellant's complaints of left shoulder pain and soreness.

In a decision dated October 28, 2009, the Office denied appellant's claim. It found that he failed to submit sufficient medical evidence to support a left shoulder injury on June 24, 2009 due to the accepted incident.

On November 19, 2009 appellant requested reconsideration.

In August 28, 2009 report, Mr. Travis advised that appellant sustained a left shoulder labral tear. Medical evidence previously of record was also submitted.

By decision dated January 5, 2010, the Office denied appellant's request for review on the ground that it did not raise any substantive legal questions or included new and relevant evidence sufficient to require further merit review.

## ***LEGAL PRECEDENT -- ISSUE 1***

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that the essential elements of his or her claim including the fact that the

[1] 5 U.S.C. § 8101-8193.

individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused an injury.[5] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[7]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[8] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

## ***ANALYSIS -- ISSUE 1***

The Office accepted that appellant descended an exercise rope on June 24, 2009. The question of whether the employment incident caused his left shoulder condition must be

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[2] *Joe D. Cameron,* 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *John J. Carlone,* 41 ECAB 354 (1989).

[5] *Id.* The term "[traumatic] injury," is defined at 20 C.F.R. § 10.5(ee).

[6] *Carlone, supra* note 4.

[7] *See Joe T. Williams,* 44 ECAB 518, 521 (1993).

[8] *Id.*

established by probative medical evidence.[9] Appellant has not submitted sufficient medical evidence to establish that the June 24, 2009 employment incident caused the claimed injury.

Appellant submitted reports from Dr. Kirkpatrick, who stated that appellant experienced pain on the lateral side of his left shoulder while engaged in a June 24, 2009 rope course exercise. He had pain, discomfort and some occasional popping in his left shoulder, which worsened with activity. On September 15, 2009 Dr. Kirkpatrick advised that a left shoulder MRI scan showed a SLAP lesion, impingement of the rotator cuff and a partial surface injury to his supraspinatus with some AC joint arthritis.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[10] Although Dr. Kirkpatrick provided a diagnosis of appellant's condition, he did not adequately address how this condition was caused by the June 24, 2009 incident on which appellant slid down a rope. The medical reports of record did not explain how appellant sustained a SLAP lesion/tear while descending an exercise rope on June 24, 2009. Dr. Kirkpatrick's report on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his opinion.[11] He did not describe appellant's accident in any detail or how the accident would have been competent to cause the claimed left SLAP lesion/tear. Dr. Kirkpatrick's opinion is generalized in nature and equivocal in that he briefly concluded that appellant's condition was causally related to the June 24, 2009 work incident. There is insufficient rationalized evidence of record. The reports from Mr. Travis, a physician's assistant, have no probative value. Reports from a physician's assistant are not considered medical evidence as a physician's assistant is not a physician as defined under the Act.[12] Therefore, appellant failed to provide sufficient evidence addressing how the work incident of June 24, 2009 caused or contributed to the claimed lower back injury.

The Office advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the June 24, 2009 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a left shoulder injury in the performance of duty. The Office properly denied appellant's claim for compensation.

## ***LEGAL PRECEDENT -- ISSUE 2***

Pursuant to 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting

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[9] *Carlone, supra* note 4.

[10] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[11] *William C. Thomas*, 45 ECAB 591 (1994).

[12] *See* 5 U.S.C. § 8101(a); *Ricky S. Storms*, 52 ECAB 349 (2001).

relevant and pertinent evidence not previously considered by the Office.[13] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[14]

## ***ANALYSIS -- ISSUE 2***

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; nor has he advanced a relevant legal argument not previously considered by the Office. The evidence he submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[15] Appellant submitted a Form CA-16 dated from Mr. Travis, a physician's assistant. As noted a physician's assistant is not a physician and the report does not constitute medical evidence under section 8101(2). Appellant has not submitted any relevant medical evidence addressing the issue of whether he sustained a left shoulder injury in the performance of duty on June 24, 2009. The medical reports previously of record were considered by the Office in the decision denying his claim. This evidence is therefore cumulative and duplicative.[16] Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen his claim for a review on the merits.[17]

## ***CONCLUSION***

The Board finds that appellant has failed to establish that he sustained a left shoulder injury in the performance of duty on June 24, 2009. The Board finds that the Office properly refused to reopen his case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

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[13] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[14] *Howard A. Williams,* 45 ECAB 853 (1994).

[15] *See David J. McDonald*, 50 ECAB 185 (1998).

[16] *See Patricia G. Aiken*, 57 ECAB 441 (2006).

[17] The Board notes that appellant submitted additional evidence to the record following the July 16, 2008 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501(c).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the January 5, 2010 and October 28, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 12, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board